



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 02 2013

VIA FIRST CLASS MAIL AND E-MAIL

Neil P. Reiff, Esq.
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1025 Vermont Avenue, NW, Suite 300
Washington, DC 20005

RE: MUR 6731
(formerly AR 12-11)

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("Commission") became aware of information suggesting that your client, the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 3, 2012, your client was notified that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On April 23, 2013, the Commission found reason to believe that your client violated 2 U.S.C. §§ 441a(a), 434(b), and 441a(f) with respect to coordinated party expenditures and the receipt of an excessive contribution. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination. Also on that date, after considering the circumstances of this matter, there were an insufficient number of votes for the Commission to proceed with the referred finding relating to the disclosure of certain disbursements.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that your client has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer

MUR: 6731
(formerly AR 12-11)

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer (the "Committee") is a state party committee that registered with the Commission on April 19, 1972. Pursuant to 2 U.S.C. § 438(b), the Commission authorized an audit of the Committee's activity during the period from January 1, 2007, through December 31, 2008. The Audit Division ("Audit") issued an Interim Audit Report ("IAR") on July 22, 2011, and a Draft Final Audit Report ("DFAR") on March 13, 2012 to the Committee. The Committee responded to the IAR and DFAR by amending certain disclosure reports and submitting formal responses. *See* IAR Resp. (Sept. 23, 2011); DFAR Resp. (Mar. 28, 2012). It did not request an Audit Hearing. The Commission approved the Proposed Final Audit Report on September 17, 2012; Audit referred this matter to OGC on November 27, 2012; and OGC notified the Committee of the Referral on December 3, 2012. *See* Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

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B. Excessive Coordinated Party Expenditures

Annette Taddeo was a candidate for the U.S. House of Representatives from Florida during the 2008 election cycle. The Committee aired two advertisements on behalf of Taddeo that constitute coordinated party expenditures; one discussing her position on health care, the other discussing her opponent's voting record. AR 12-11 at 4-5 (Democratic Executive Committee of Florida). The Committee paid \$82,400 to run the two ads, which included disclaimers stating: "Paid for by the Florida Democratic Party and Taddeo for Congress, Approved by Annette Taddeo." *Id.*

In addition to any contribution from a committee to a candidate permissible under 11 C.F.R. § 110.2, the Federal Election Campaign Act of 1971, as amended, (the "Act") provides that a state committee of a political party may make coordinated party expenditures in connection with the general election campaign of candidates for federal office in that state and affiliated with that party. 2 U.S.C. § 441a(d); 11 C.F.R. § 109.32(b), (d). The amounts of such coordinated party expenditures are limited by 2 U.S.C. § 441a(d)(3). Any coordinated party expenditure exceeding this limitation constitutes an in-kind contribution, *see* 11 C.F.R. § 100.52(d)(1), and is therefore subject to the contribution limitations of 2 U.S.C. § 441a(a).

The national and state committees of a political party may assign their respective authority to make coordinated party expenditures to another political party committee. 11 C.F.R. § 109.33(a). "Such an assignment must be made *in writing*, must state the amount of the authority assigned, and must be received by the assignee committee *before* any coordinated party

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1 expenditure is made pursuant to the agreement.”¹ *Id.* (emphasis added). A political party
2 committee must retain any such written assignment for at least three years. 11 C.F.R. § 109.33(e).

3 For the 2008 election cycle, the coordinated expenditure limit for a congressional
4 candidate running in Florida was \$42,100. Price Index Increases for Expenditure Limitations, 73
5 Fed. Reg. 8,696 (Feb. 14, 2008). The Committee’s records reflect that it was also authorized by
6 the Democratic Congressional Campaign Committee (“DCCC”) to spend an additional \$17,900 in
7 connection with the Taddeo election. AR 12-11 at 5. Thus, the Committee was authorized to
8 make \$60,000 in total coordinated party expenditures on behalf of Taddeo.

9 The Committee stated its belief that, in addition to the \$17,900 that the DCCC assigned, it
10 was also authorized to spend an additional \$22,400. *Id.* at 5. The Committee reasons that the
11 DCCC had reported spending only \$1,754 on behalf of Taddeo and the DCCC stated that it would
12 not have withheld any requested transfer of authority. *Id.* Neither the Committee nor the DCCC,
13 however, have any written records evidencing the transfer of additional expenditure authority
14 beyond \$17,900. *Id.* at 6. Thus, based on the records produced during the audit, the Committee’s
15 coordinated party expenditure limit in connection with the Taddeo election totaled \$60,000
16 (\$42,100 + \$17,900). *Id.* And on this basis, the Commission approved a finding that the
17 Committee exceeded its coordinated party expenditure limit by \$22,400 (\$82,400 - \$60,000). *Id.*
18 at 6-7.

19 In response to the Referral, the Committee acknowledges that it cannot locate any records
20 evidencing the asserted additional expenditure authority from the DCCC. Resp. at 1 (Jan. 15,
21 2013). The Committee notes, however, that the DCCC did not intend to use its additional

¹ In past cases, the Commission has rejected assignments of spending authority after the fact. See Final Audit Report, MUR 5274 (Missouri Democratic State Committee); Final Audit Report, MUR 5246 (California Republican State Committee).

1 authority and that the combined coordinated expenditure limit of \$84,200 was not exceeded on
2 behalf of Taddeo. *Id.* Thus, the Committee argues that “no unfair advantage had been conferred
3 upon [the Committee] or the Taddeo campaign,” and the violation amounts to “a paperwork error
4 only.” *Id.* at 2.

5 Commission regulations are unmistakably plain. Regardless of whether the DCCC
6 intended to assign its additional expenditure authority to the Committee, the assignment must have
7 been made in *writing* and made before any expenditure can be made pursuant to the assignment.
8 Because there was no such written authorization, as set forth in the Referral, the Committee
9 exceeded its coordinated party expenditure limit by \$22,400. The Commission therefore found
10 reason to believe that the Committee violated 2 U.S.C. § 441a(a) by making an excessive
11 contribution of \$22,400.²

12 **C. Failure to Itemize Coordinated Party Expenditures**

13 The Audit Division identified 62 coordinated party expenditures that were not itemized as
14 such on Schedule F. AR 12-11 at 7-8. These expenditures, totaling \$194,957, were made on
15 behalf of six congressional candidates and include payments for staff salaries, direct mail, cell
16 phones, and media advertisements. *Id.* During the audit, the Committee filed amended reports
17 “substantially disclos[ing]” the expenditures in question on Schedule F. *Id.* at 7. The FAR thus
18 concludes that “DECF has corrected the public record with respect to these transactions,” *Id.*
19 Although the Committee corrected its disclosure reports, its original reports did not fully disclose
20 these transactions. Accordingly, the Commission approved a finding that the Committee did not
21 itemize coordinated party expenditures of \$194,957 on Schedule F. *Id.* at 8.

² The Act also limits the contributions that a state party committee may make to a candidate committee to \$5,000 per election. 2 U.S.C. § 441a(a)(2). In addition to the coordinated party expenditures on behalf of Taddeo, the Committee also made the maximum \$5,000 contribution to the Taddeo campaign committee on October 13, 2008. Accordingly, the entire amount of the excessive coordinated party expenditure constitutes an excessive contribution.

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1 In response to the Referral, the Committee acknowledges that the expenses were not
2 disclosed on Schedule F but notes that they were disclosed on Schedule B. Resp. at 2. The
3 Committee further notes that it promptly amended its reports in response to the IAR. *Id.*

4 Any political committee other than an authorized committee must disclose all
5 disbursements categorized as coordinated party expenditures on its disclosure reports. 2 U.S.C.
6 § 434(b)(4). These reports must also include the name and address of each person who receives
7 any expenditure from the committee during the reporting period in connection with a coordinated
8 party expenditure, together with the date, amount, and purpose of any such expenditure as well as
9 the name of, and office sought by, the candidate on whose behalf the expenditure is made.
10 2 U.S.C. § 434(b)(6).

11 As set forth in the Referral, the Committee failed to itemize \$194,957 in coordinated party
12 expenditures on Schedule F. The Commission therefore found reason to believe that the
13 Committee violated 2 U.S.C. § 434(b) by failing to itemize these disbursements.

14 **D. Receipt of Excessive Contribution**

15 On September 24, 2008, the Committee received a \$50,000 contribution from Gerald T.
16 Vento. AR 12-11 at 11. The Committee deposited \$30,000 of this amount into its non-federal
17 account and \$20,000 into its federal account. *Id.* On April 22, 2009 — 210 days later — the
18 Committee refunded \$10,000 to Vento. *Id.*

19 In response to the Referral, the Committee acknowledges that it deposited \$20,000 of the
20 Vento contribution into its federal account. Resp. at 2. The Committee asserts, however, that
21 “[a]t the time of the deposit, it is believed that the Committee intended to attribute \$10,000 of the
22 federal portion of the contribution to Mr. Vento’s spouse.” *Id.* The Committee explains that the
23 reattribution did not occur and acknowledges that its \$10,000 refund to Vento was untimely. *Id.*

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1 The Committee notes, however, that it had sufficient funds to refund the contribution at all times
2 before the refund. *Id.* at 3.

3 The Act prohibits a state party committee from knowingly accepting contributions from
4 any one contributor that aggregate more than \$10,000 per calendar year. 2 U.S.C. § 441a(a)(1)
5 and (f); 11 C.F.R. § 110.1(c)(5). Contributions that exceed this limit either on their face or when
6 aggregated with other contributions from the same contributor may be either deposited into a
7 campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If the contribution is
8 deposited, the treasurer may request redesignation or reattribution of the contribution by the
9 contributor; however, if a redesignation or reattribution is not obtained, the treasurer must refund
10 the contribution to the contributor within 60 days of its receipt. *Id.*

11 As set forth in the Referral, the Committee deposited a \$20,000 contribution into its federal
12 account and failed to redesignate, reattribute, or refund the excessive portion of the contribution
13 (\$10,000) within 60 days of its receipt. Accordingly, the Commission found reason to believe that
14 the Committee violated 2 U.S.C. § 441a(f) by accepting an excessive contribution.

15 The Committee objects to the inclusion of this issue in the Referral because it was not
16 included in the FAR. Resp. at 3. The Committee notes that the issue did not meet the
17 Commission's thresholds for inclusion in the FAR and argues that the Commission "cannot bait
18 and switch issues that are not found to be material in the Audit context and then, after the fact,
19 decide that it is subject to civil enforcement and penalty." *Id.* The Committee asserts that only
20 issues raised in the FAR should be included in an Audit referral, to "provide the regulated
21 community . . . with notice as to those issues that are subject to subsequent enforcement in
22 connection with a particular audit." *Id.*

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1 The Committee's objection is unpersuasive. First, contrary to the Committee's reasoning,
2 Audit is empowered to refer to OGC alleged violations that do not meet the thresholds for
3 inclusion in an interim audit report. Second, the Committee received notice of the alleged
4 violation several times. On November 30, 2009, Audit raised the alleged excessive contribution
5 with the Committee during the exit conference. *See* AR 12-11 at 11. The Committee
6 subsequently filed an Exit Conference Response addressing the excessive Vento contribution. *See*
7 Exit Conference Response (Dec. 14, 2009). Additionally, on December 3, 2012, the Committee
8 received notification of the Referral to OGC. Letter from Jeff Jordan, Att'y, FEC, to Alma
9 Gonzalez, Committee Treasurer (Dec. 3, 2012). Accordingly, this issue was considered in
10 conjunction with the findings referred to OGC from the FAR.

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